

REMARKS

This is in full and timely response to the non-final Office Action dated September 16, 2005. Reexamination in light of the following remarks is respectfully requested.

Claims 13-20 are currently pending in this application, with claims 13, 14, and 16 being independent. *No new matter has been added.*

At least for the following reasons, if the allowance of the claims is not forthcoming and a new ground of rejection made, then a *new non-final Office Action* is respectfully requested.

Claim Rejections

While not conceding the propriety of the claim rejections found within the Office Action, claims 1, 5, and 11 have been canceled without prejudice or disclaimer of their underlying subject matter.

Withdrawal of these claim rejections is respectfully requested.

Claims 13 and 17

No claim objection or rejection of claim 13 is found within the Office Action.

Accordingly, claim 13, and claim 17 dependent thereon, are deemed to contain allowable subject matter.

Allowance of the claims is respectfully requested.

Claims 14-16 and 18-20

Support for new claims 14-16 and 18-20 can be found variously throughout the specification, including for example, page 17, lines 7-12 and page 24, lines 13-24. Since each of these new claims is clearly distinguishable from the applied art of record, allowance of the same is courteously solicited.

Claim 14 recites, *inter alia*, a torsion-detection means for automatically obtaining a torsion-error angle of the eye. Claim 16 recites, *inter alia*, a torsion-detection unit automatically obtaining a torsion-error angle of the eye.

Gray, on the other hand, fails to disclose, teach, or even suggest a torsion-detection means for automatically obtaining a torsion-error angle of the eye.

The Office Action indicates a computer is used to provide alignment with the marks on the eye. While a computer is arguably used as a means to correcting the alignment, the computer has no means for automatically obtaining a torsion-error angle; rather, an operator must manually move the reticle, by means of the computer, and aided by an image produced by the computer on a monitor (column 8, lines 7-9). The operator thus manually centers the reticle over the image of the eye (column 5, lines 17-20).

The data obtained from the operator's manual positioning of the reticle over the eye is then used by the computer to determine an orientational change to be applied to the surgical procedure (column 8, lines 30-34). Therefore Gray **does not** disclose a torsion-detection means for **automatically obtaining a torsion-error angle of the eye**.

The Office Action further states that Gray discloses tracking ability. However, the eye tracker of Gray merely tracks the eye in order to display an image of the eye on the computer monitor, allowing the operator to position the reticle over the image of the eye (column 8, lines 5-14). The disclosure does not even suggest that the tracker has the ability to detect torsional movement, let alone the ability to obtain a torsion-error angle of the eye.

Accordingly, because Gray fails to disclose, teach or suggest each and every limitation of claim 14 and 16, a *prima facie* anticipation rejection has not been established, and withdrawal of this rejection is respectfully requested. *See, e.g., Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987) (“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference”). *See also Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1566 (Fed. Cir. 1989). (“The identical invention must be shown in as complete detail as is contained in the ... claim.”).

Claims 15, 18, and 19 depend from claim 14. By virtue of this dependency, Applicant submits that claims 15, 18, and 19 are allowable for at least the same reasons given above with

respect to claim 14. In addition, Applicant submits that claims 15, 18, and 19 are further distinguished over Gray by the additional elements recited therein, and particularly with respect to each claimed combination. Applicant respectfully requests, therefore, that these claims be allowed.

Claim 20 depends from claim 16. By virtue of this dependency, Applicant submits that claim 20 is allowable for at least the same reasons given above with respect to claim 16. In addition, Applicant submits that claim 20 is further distinguished over Gray by the additional elements recited therein, and particularly with respect to each claimed combination. Applicant respectfully requests, therefore, that this claim be allowed.

CONCLUSION

For at least the foregoing reasons, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the examiner is respectfully requested to pass this application to issue. If the examiner has any comments or suggestions that could place this application in even better form, the examiner is invited to telephone the undersigned attorney at the below-listed number.

Applicant believes no fee is due with this response. However, if a fee is due, please charge our Deposit Account No. 18-0013, under Order No. WEN-0021 from which the undersigned is authorized to draw.

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Respectfully submitted,

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